IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 5325 of 2006(H)

OS.56/2001 of SUB COURT,KOTTARAKKARA
OP.5/2000 of SUB COURT,KOTTARAKKARA

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PETITIONER:

RAJAMMAL, W/O.GOPALA PILLAI,
RAJ NIKETHAN, MANIYAR P.O., PUNALUR.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS:

NATARAJA PILLAI, S/O.GOPALA PILLAI,
RAJ NIKETHAN, PUNALUR, PRESENTLY RESIDING AT
"AISWARYA" RAVI NAGAR, PEROORKKADA,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.5325/06

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN IA.526/03 IN O.S.56/01, DT.2.2.05

EXT.P2 – TRUE COPY OF WILL PRODUCED BY RESPONDENT BEFORE SUB COURT, KOTTARAKKARA IN O.P.(SUCCESSION) NO.5/2000 (WILL DT.23.4.2000) BY GOAPALA PILLAI.

EXT.P3 – TRUE COPY OF EX-SERVICEMEN IDENTITY CARD OF LATE GOPALA PILLAI ISSUED BY ZILA SAINIK WELFARE OFFICE, KOLLAM.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.5325 OF 2006

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DATED THIS THE 5th JULY, 2007

J U D G M E N T

An Original Petition under the Succession Act seeking grant of a succession certificate for administering the amounts covered by certain Fixed Deposit receipts is being tried jointly with O.S.No.56 of 2001 filed by the petitioner who claims to be the second wife of deceased Gopala Pillai. The succession O.P. is filed by the respondent who is the son of late Gopala Pillai through his first wife. The respondent claims the amounts covered by the Fixed Deposit receipts on the basis of a Will. The contention of the petitioner in O.S.No.56 of 2001 filed by her is that the Will is not a genuine one. The petitioner filed an application (I.A.No.526 of 2003) before the trial court for forwarding the Will to a forensic expert so that a report will be obtained regarding the genuineness of the handwriting and signatures on the Will. Under the impugned order, the above application has been dismissed by the learned Sub Judge.

2. Heard both sides.

3. I do not propose to go into the merits of the rival contentions. But when the I.A. was filed on the basis of the averments made in an affidavit and when the prayers in the I.A. are resisted on the basis of

the averments in the counter-affidavit, one would expect the learned Sub Judge to give reasons when he takes decision not to grant the I.A. Ext.P1 is a totally non-speaking order. I set aside Ext.P1 on that reason and direct the learned Subordinate Judge to hear the parties once again and take fresh decision on I.A.No.526 of 2003 within one month of receiving copy of this judgment. I expect the learned Sub Judge to state reasons for supporting the decision to be taken.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl